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Reforming care proceedings 1: Court Outcomes

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Context

Reforms in the Children and Families Act 2014 aimed to achieve quicker decisions for children and families. The Act, and associated court rules and guidance, set a time limit of 26 weeks for proceedings, and limited the use of expert evidence and court scrutiny of care plans. New procedures required local authorities to prepare cases fully before applying to court and children's guardians to assess children's welfare early in the proceedings. At the same time, case law - *Re B* and *Re B-S* - stressed that court orders must be proportionate and set demanding standards for the reasoning in social workers' care proposals and judges' decisions.

About the Study

The study, conducted in six local authorities in England and Wales, 2 in London; 3 in Southern England and 1 in Wales, examined the operation and impact of these reforms by comparing two random samples of care proceedings:

Before reform: S1, 170 cases relating to 290 children brought in 2009-10;

After reform: S2, 203 cases relating to 326 children brought in 2014-15.

Data, extracted from court files, was analysed quantitatively, allowing comparisons between children's circumstances, the proceedings and the court outcomes. Court data was linked to administrative data on children's care and, for a smaller sample, qualitative data from children's services files. Using this information, the study examined children's outcomes 1 and 5 years after the order (see Summary 2).

Key Points

- Care proceedings were completed more quickly after the reforms: about half the time taken for S1 cases. Completion at the Issues Resolution Hearing (IRH) was important for keeping average durations low, but judicial case management and listing practices prevented this in some courts.
- There were major differences in the orders granted by the courts in S2 compared with the earlier sample, with more Special Guardianship and Supervision Orders but half as many Placement Orders, which allow placement for adoption.
- The change in orders was not planned as part of the reforms, not predicted, nor was it based on evidence about 'what works' for children. It related to case law decisions and the uncertainty they caused for local authorities and courts.
- There were strenuous attempts by both local authorities and courts to ensure children remained within their wider families. Local authorities were sometimes required to assess three or more potential relative carers and given short deadlines for this. A third of children who became subject to Special Guardianship Orders had not lived with their relative carer before the order.
- Fewer Interim Care Orders were made for S2; more children remained in s.20 care or with their families throughout the proceedings. Almost a quarter of children were not in the care system before, during or after the proceedings.
- Supervision Orders were often unsuccessful in securing long term protection for children; 25% of cases with these orders returned to the court.

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Findings

S1 before reform; S2 after reform

The families in the samples

The families in both samples were comparable to each other, and to families in other studies of child protection proceedings. Chronic child neglect in the context of substance abuse, domestic violence and mental health difficulties together with poor engagement with Children's Services were common. Differences in the court process and orders reflect the impact of the reforms.

Reforms to care proceedings – the PLO

The Family Justice Review (2011) recognised that *'Delay really matters and damages children'* (p.13). It proposed reforms to care proceedings to: 1) enact a time limit of 26 weeks; 2) restrict the appointment of external experts, relying instead on social work evidence from the local authority and children's guardian; and 3) narrow court scrutiny of the care plan, focusing on the arrangements for permanency – re-unification, kinship care, long-term fostering or adoption. The same judge should hear a case throughout and manage the case to timely completion. The Public Law Outline (PLO) implemented these reforms from April 22, 2014.

The length of care proceedings

The average duration of care proceedings in S1 was 55 weeks, compared with only 26 weeks for S2. The 26-week timescale placed demands on courts, local authorities and all the professionals involved. There was no evidence that the demands of case preparation resulted in delays to applications. The Local Authorities had all revised their approach to the pre-proceedings process to avoid drift.

The 26-week average was achieved by completing a substantial proportion of cases at an Issues Resolution Hearing (IRH). Cases completing at IRH were on average 6 weeks shorter than those with a Final Hearing. There was wide variation between Areas in the proportion of cases completed at an IRH ranging from 62% to 10%. Judges who participated in the Focus Groups recognised their role in managing cases to timely completion.

'I have a very high rate of success at IRHs, but I think the work is done at the very first hearing, which is the point when you set out what the parents will need to do in terms of changing...' Judge

'You need to put the work in at the IRH; you need to have put the work in earlier. You need to be very clear with the parents, make sure that they feel they had that opportunity right at the beginning...' Judge

Judges noted that listing a Final Hearing before the IRH generally precluded earlier completion of cases.

Shorter cases were also associated with:

- judicial continuity – on average cases with 1 judge took 3 weeks less than cases with 2 or more judges.
- No experts or only 1 expert appointed in proceedings. On average, cases with no experts concluded in 22 weeks, those with 2 or more experts took 31 weeks.

Longer cases involved more hearings, which made greater demands on both local authority and court resources.

Court Orders

The orders made by the courts in S1 cases were similar to those made in earlier studies (Hunt and Macleod 1999; Masson *et al* 2008), where around 60% of children were made the subject of a Care Order or a Care and Placement order.ⁱ In S1, COs were made for 32% of children and CO+PO for 28%.

Orders for the S2 sample were different: only 14% of children were made the subject of a Placement Order; Care Orders were made for 29% of children, a total of 44% for both orders.

Conversely, there was an increase in orders to support placement with relatives or placement with parents. Special Guardianship Orders (SGOs) increased from 15% to 24% of court outcomes with the increase largely accounted for by an upsurge in Special Guardianship Orders with a Supervision Order attached. This arrangement was used where there were concerns about the relative carer's ability to care for the children and to manage contact, or because the court wanted to ensure that the local authority continued to provide services for the child and carer. In all but 1 Area substantially more SGOs were made for S2 than S1 children. Use of SGO+SO varied substantially between Areas but there was no evidence from the local authority data (see Summary 2) that the SGO cases with a SO were treated differently from other SGOs by local authorities.

Supervision orders also increased from 11% in S1 to 19% in S2. Variation between S1 and S2 was particularly marked in two Areas.

Reasons for the change in orders

It was not possible to disentangle the PLO reforms from the impact of case law decisions (*Re B* and *Re B-S*ⁱⁱ) in the summer of 2013, when the PLO was being piloted nationally. However, for local authority interviewees and judges the changes to court orders was solely due to the case law.

'when Re B-S came out, special guardianships went up ... it wasn't saying anything new.... but it shifted the court's focus.'
LA Solicitor

'This whole Re B-S thing, ... you have really got to evidence that nothing else will do, that adoption is the last resort... quite rightly ...but I do feel that the threshold has really risen on that ... we have to go through more hoops...'
LA Manager

'...an increase in the number of SGOs and a reduction in Placement Orders...has got to go back to Re B-S, the effect that Re B-S has had on the law and the perception of the law.' Judges Focus Group

'26 weeks has got absolutely nothing to do with [the change in orders].'
Judges Focus Group

Few applications for Placement Orders were refused by the courts. Rather local authority lawyers and managers advised that there was insufficient evidence to reject a potential family placement in favour of a plan for adoption. However, where relatives offered care late in the proceedings and little time was allowed for assessments, Special Guardianship Orders were made with less thorough consideration than had occurred for children in S1.

Placement with kin

Local authority social work managers recognised that placements with kin brought benefits for children who could not remain with, or return to, their parents and reduced the demand for local authority placements. Identifying potential relative carers was challenging. Parents might conceal difficulties from their families; relatives might not offer care out of loyalty to the parents; and divided families could exclude paternal or maternal kin. Social workers tried to identify relatives during pre-proceedings work (or earlier) through discussion with parents and calling family meetings.

Once possible relatives were identified social workers assessed whether they were potential carers (viability assessments) and if so, undertook full assessments.

Kin were assessed before the proceedings in a third of S2 cases.

Some judges directed parents to provide contact details for potential kin carers at the first hearing. Courts directed viability assessments in half of S2 cases before the IRH; 196 viability and 96 full assessments were undertaken before the IRH with 4 or more viabilities in 10 cases and 2 or more full assessments in 11 cases. Later viability assessments were ordered in 15 cases with full assessments in 20. Multiple assessments were required because kin assessed positively withdrew, and sometimes because further assessments were ordered of relatives who were not positively assessed.

Pressure from the courts to keep to the 26-week timetable and late presentation by kin resulted in some very short timescales for assessments. The average time allowed was 12 weeks but in a third of cases this was 8 weeks or less. Social work managers viewed 12 weeks as the minimum time for a sufficiently thorough assessment and to allow the potential carer to consider fully the implications.

Late presentation of kin could also result in children being placed with relatives whom they did not know. A third of children had not lived with their SGO carer before the order was made, and the carer's assessment for half of these children had lasted 10 weeks or less.

Some social work managers and judges thought it better for children to have a care order, continue the assessment and to support the relative to apply for a SGO (discharging the CO) once the child was settled in the placement. Different views about this are captured in the following quotations:

'It makes me angry that we get these SGO assessments rushed through only because of Court's timescales... they are done really quickly, they are not done thoroughly...'
LA Manager

'Sometimes you can shift at the IRH... if, for example, the plan is [kin care] ...you can say, "Can we try it out for a few weeks?" because we shouldn't be making SGOs without some evidence of it working. ... And you can use those 4 weeks to get the evidence.'
Judge

Orders for Contact

Differences between S1 and S2 in the numbers of Child Arrangement Orders (CAOs) for contact related to an increase in children remaining in their family.

Courts made CAOs for more than two-fifths of children placed with a parent and in a third of cases with SGOs. There were wide variations between Areas, with CAOs for half the children subject to SGOs in 2 Areas and none in a third.

Contact orders (s.34) were uncommon for children in care; for most children contact arrangements were only in the care plan and considered in reviews. Orders were made terminating contact in a few cases.

Interim care orders (ICO) and s.20

There was a decline in Interim Care Orders from S1 (74%) to S2 (61%) with an increase in Interim Supervision Orders and/or Interim Child Arrangement Orders for children staying with a parent or relative. Courts were more reluctant to allow children to be removed under an ICO and local authorities unwilling to have the responsibility of a Care Order whilst the child remained in a situation they viewed as significantly harmful. More children were looked after by voluntary arrangement (s.20) throughout the proceedings in S2, 14% compared with 9%. Such arrangements were favoured by parents' lawyers because they demonstrated their clients could co-operate with social workers. Local authority lawyers noted that such arrangements saved court time. 17% of S1 children and 24% of S2 children were not in any type of local authority care during the proceedings.

Further proceedings

Whether or not there were further proceedings largely depended on the order made in the care proceedings. Children subject to only Supervision Orders were most likely to have further care proceedings: new applications were made for 31% of S1 children (in 6 years) and 22% of S2 children (in 2 years).

There were further (private law) applications for CAOs, for contact or to change carer, for 24 children from 15 families. There were very few applications to discharge care orders, only one of which succeeded when the young person was already 17 years old.

In S1, 78% of children with Placement Orders were adopted within 5 years. In S2, 84% of children had been placed for adoption and more than half had been adopted within a year of the Placement Order.

Overall, 12% of S1 cases and 13% of S2 cases involved either previous or later care proceedings for a child in the sample.

Further details of the research

Establishing outcomes of care proceedings for children before and after care proceedings reform was an ESRC-funded Study, undertaken by Judith Masson, Professor of Socio-legal Studies, Dr Ludivine Garside and Kay Bader, Research Fellows, from the School of Law, University of Bristol and Jonathan Dickens, Professor of Social Work and Julie Young, Senior Research Associate, from the School of Social Work, University of East Anglia. The Department for Education and Cafcass were partners in the research.

There are 2 other summaries for this study:

Reforming care proceedings 2: Children's Outcomes

Reforming care proceedings 3: Insights from data linkage

These can be downloaded from:

www.uea.ac.uk/socialwork/research

Further details of the research and findings will be contained in a research report:

Child Protection in Court: Outcomes for Children, School of Law, University of Bristol and Centre for Research on Children and Families, University of East Anglia (2019)

This will be available for download without charge at

www.uea.ac.uk/socialwork/research

The research report for the original study on the pre-proceedings process for care proceedings, ***Partnership by Law?*** (2013)

is available at:

<https://bit.ly/1DJSmza>

A summary is available at:

<https://bit.ly/2Jc4LpR>

ⁱ Includes Freeing Orders before 2005.

ⁱⁱ *Re B* [2013] UKSC 33; *Re B-S* [2013] EWCA Civ 1146